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IN THE UNITED STATES PATENT AND TRADEMARK OFFICEIn re Application of: **RONALD J. DOMES**Application No.: **10/670,756**Filed: **09/26/2003**For: **TARGETED PROMOTIONAL METHOD & SYSTEM**) DATE: **January 21, 2008**Attorney Docket : **A891338US1****MAIL STOP NON-FEE AMENDMENT**Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sirs,

RESPONSE TO ELECTION REQUIREMENT

An election requirement office action from Patent Examiner Michael H. Goldman dated December 20, 2007 has been received and carefully reviewed. The following is the Applicant's response to the office action/election requirement.

ELECTION AND TRAVERSE

The Applicant is required under 35 USC 121 to elect either:

- I. Claims 1-13, and 23-28, drawn to a process of targeted promotion using at least one audio-video apparatus; or
- II. Claims 14-22, drawn to an audio-video processing apparatus.

The Applicant elects, with traverse, claims 1-13, and 23-28.

As noted by the Examiner, inventions to a process and an apparatus for its practice are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially

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different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another materially different process [MPEP 806.05(e)].

The examiner appears to have raised objection under the second requirement (2), namely that the apparatus as claimed can allegedly be used to practice another materially different process, in that the apparatus according to the examiner allegedly has separate utility such as "*real time medical diagnosis*".

However, contrary to the statement of the Examiner, the claimed apparatus does not have separate utility "*such as real-time medical diagnosis*"- such utility nowhere being disclosed or discussed in the body of the application. It is not in any way clear how the claimed apparatus, which is recited as comprising, in part, a "digital video juke box", could be used in a "*real-time medical diagnosis*". The Applicant suggests the examiner has improperly read this utility into the apparatus claims 14-22 which each recite an apparatus comprising a "digital video juke box" as they nowhere recite any such apparatus "*having utility in real-time medical diagnosis*."

As to the first requirement that in order to make an election requirement (1) the process as claimed be capable of being practiced by another materially different apparatus or by hand, the apparatus of claim 14-22 is novel and specifically adapted to implement the process of claims 1-13 and 23-28. Applicant is unaware of any other apparatus, nor has the examiner specified any different apparatus, which could implement the process as recited in claims 1-14 and 23-28. Nor can this process be practiced "by hand".

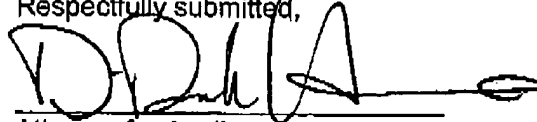
Accordingly, it is submitted the restriction requirement should be withdrawn.

Lastly, and contrary to the allegation of the examiner, no telephone call could have been made to Mr. Michael Durham to request an oral election — such individual being unknown to the Applicant.

Applicant's undersigned attorney D. Doak Horne, Reg. No. 33,105 may be reached at (403) 298-1994 in the event the examiner should have any questions in respect of the above amendments. All correspondence should continue to be directed to the address given below.

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Respectfully submitted,



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